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THE CRIMINAL LIABILITY OF DIRECTORS AND OFFICERS OF A CORPORATION.—The cases which deal with the criminal liability of directors and officers of a corporation strongly establish the view that they are liable criminally for their wrongful acts or for the wrongful acts of the corporation which they have authorized or participated in, but are not liable for the wrongful acts or omissions of the corporation merely from the fact that they are in official control of its affairs. So the clearest case of the director's or officer's liability is where he does a criminally wrongful act against the corporation. The obvious common law responsibility for such acts has been occasionally extended by the creation of statutory offenses.¹

When the directors or officers authorize or take part in a criminal corporate act against a third person, they cannot escape responsibility by pleading that the act was that of the corporation.² The participants may be indicted severally as a cumulative remedy,³ or they may be indicted jointly with the corporation.⁴ The official's criminal liability for his wrongful conduct toward the public also has been extended by statute to a greater degree than in the case of his conduct toward the corporation referred to above.⁵ It must be emphasized, however, that with some possible exceptions, whenever it is sought to hold the official for a criminal corporate act it must be shown, as was held in a recent Oregon case, *State v. Ross* (1909) 104 Pac. 596, that he participated in, authorized, or assented to it.⁶ Obviously, this is very true in the case of crimes which require proof of guilty knowledge or criminal intent.⁷ So, when a crime is committed by an employee of a corporation, between whom and an officer of the corporation the relation of principal and agent is said to exist, in the absence of proved authorization, the officer is held innocent on the familiar principle of agency that an authority from a principal to do a criminal act, as distinguished from one merely tortious, will never be implied.⁸ An exception to the requirements of participation has been made by one case in which the directors and officers were held liable for a nuisance maintained by the corporation though they were ignorant of the illegal manner in which the business was carried on.⁹ It has also been intimated⁸ that where the law

¹*Flickinger v. U. S.* (1906) 150 Fed. 1; *Crook v. Jewett* (N. Y. 1854) 12 How. Prac. 19. See the special statute in England under which the court may direct the official receiver of a corporation to prosecute directors for misconduct. *In re London etc. Corporation* [1903] 1 Ch. 728.

²*People v. Duke* (N. Y. 1897) 19 Misc. 292; *Crall v. Comw.* (1905) 103 Va. 855.

³*Wharton*, Criminal Law § 92. *Cf. State v. Conlee* (1868) 25 Ia. 237.

⁴*U. S. v. MacAndrews & Forbes Co.* (1906) 149 Fed. 823.

⁵*State v. Ware* (1904) 71 N. J. L. 53 (issuing false statements); *State v. Moore* (1896) 69 N. H. 99 (issuing fraudulent certificates); *State v. Wells* (1896) 134 Mo. 238 (bank officer receiving deposits when he knows the bank insolvent).

⁶*People v. England* (N. Y. 1882) 27 Hun 139.

⁷*State v. Carmean* (1905) 126 Ia. 291; *State v. Parsons* (1882) 12 Mo. App. 205, 209.

⁸*State v. Carmean supra*.

⁹*Rex v. Medley* (1834) 6 C. & P. 292, 299; *People v. White Lead Works* (1890) 82 Mich. 471, 479. The case does not state whether or not the officers authorized the acts complained of.

makes it illegal to conduct the business in a certain manner, the officials of a corporation may be held without proof of knowledge, on the analogy of a similar principle in the law of agency, but no cases have been found which decree the punishment of corporation officials under such circumstances.¹⁰

On the question of the director's or officer's liability for nonfeasance, all of the very small number of cases on the subject save one stand for their exemption.¹¹ The one case¹² which considers the question at length declares flatly that a director cannot be criminally liable for mere neglect to act. This has been maintained whether the duty was apparently imposed directly on the officers or directors of the corporation,¹³ as well as where it lay simply on the corporation.¹⁴ A single New Jersey case,¹⁵ however, in which the directors of a corporation were indicted for the death of a person alleged to have been caused by insufficient precaution at the crossing of a trolley line and a railroad, asserts that the directors may be liable for their negligent failure to perform a duty resting upon them. This is in accord with the simple principle of law which governs the situation. To hold a director or officer criminally liable for an omission, it is necessary only, as in the case of an ordinary individual, to show that there was a duty resting upon him and that he so negligently failed to perform it as to do a wrong to the public. In the majority of cases, assuming, of course, that the director is really in a position to direct the affairs of the corporation, it is no answer for him to say that the omission is only that of the corporation, since the duty rested on it alone. Just as the corporation is no shield in the case of his misfeasance, neither should it be in the case of his nonfeasance, because, as a corporation can act only through its agents, the directors and officers, its duties naturally become theirs. The mere fact that they are agents and that their principal also owes the duty, for the failure to perform which they have been indicted, is no defense.¹⁶ By statute in a few instances they have expressly been made punishable for neglect.¹⁷

"NATURAL WANTS" AND INJUNCTIVE RELIEF IN THE LAW OF RIPARIAN RIGHTS.—The common law rights of riparian owners are undoubtedly usufructuary in their nature and not absolute, and are accordingly limited by the correlative rights of other riparian proprietors.¹ So that any use of a stream by a riparian owner inflicting sensible dam-

¹⁰*Cf. Crall v. Comw. supra*, where participation by the officers in the statutory offense of the corporation was held necessary.

¹¹*Comw. v. Demuth* (Pa. 1825) 12 Serg. & Rawle 389; *State v. Barksdale* (Tenn. 1844) 5 Humph. 154.

¹²*People v. Clark* (1891) 8 N. Y. Crim. Rep. 179.

¹³*Queen v. Pocock* (1851) 17 Q. B. 34.

¹⁴*Rex v. Hays* (1907) 14 Ont. L. R. 201, 207.

¹⁵*State v. Young* (N. J. 1903) 56 Atl. 471.

¹⁶*Regina v. Haines* (1847) 2 C. & K. 367; *State v. O'Brien* (1867) 3 N. J. L. 169. *Cf. Regina v. Smith* (1869) 11 Cox C. C. 210 where the servant was not held for neglect because no duty rested on his master.

¹⁷*Kane v. People* (N. Y. 1829) 3 Wend. 363; *Cowley v. People* (1881) 89 N. Y. 464, 469.

¹*Hough v. Doylestown* (Pa. 1870) 4 Brewst. 333.